

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CR-164-D
No. 5:15-CV-89-D

PATRICE ANTONETTE WILLIAMS,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER

On March 9, 2015, Patrice Antonette Williams (“Williams” or “petitioner”) filed a motion to vacate, set aside, or correct her 30-month sentence pursuant to 28 U.S.C. § 2255 [D.E. 50]. On July 6, 2015, the government moved to dismiss the motion for failure to state a claim upon which relief can be granted [D.E. 58] and filed a memorandum in support [D.E. 59]. On July 30, 2015, Williams filed a reply in opposition [D.E. 61]. On December 7, 2015, the court granted in part the government’s motion to dismiss, dismissed all of Williams’s claims except one, and referred Williams’s ineffective-assistance claim concerning the alleged failure to file a notice of appeal to Magistrate Judge Gates for an evidentiary hearing and a memorandum and recommendation (“M&R”). See [D.E. 62]. On January 28, 2016, Judge Gates held an evidentiary hearing. See Tr. [D.E. 72]. On October 27, 2017, Judge Gates issued a comprehensive M&R [D.E. 76]. In that M&R, Judge Gates recommended that the court dismiss Williams’s failure-to-file-appeal-instruction. See id. at 7–23. On November 6, 2017, Williams’s mail was returned as undeliverable [D.E. 79]. Williams did not respond to the M&R and the Federal Bureau of Prisons, Inmate Locator website states that Williams was released from BOP custody on May 23, 2016.¹

¹ <http://www.bop.gov/inmateloc/> (search by inmate number) last visited December 14, 2017.

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Id. (quotation omitted).

The court has reviewed the entire record, including the M&R, the transcripts, the briefs, and the government’s response. The court agrees with the analysis in the M&R. Thus, the court adopts the M&R [D.E. 76].

After reviewing the claims presented in Williams’s motion, the court finds that reasonable jurists would not find the court’s treatment of Williams’s claims debatable or wrong, and that the claims do not deserve encouragement to proceed any further. Accordingly, the court denies a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In sum, the court ADOPTS the findings and conclusions in the M&R [D.E. 76], GRANTS the government’s motion to dismiss [D.E. 58], and DISMISSES Williams’s motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 [D.E. 50]. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c). The clerk shall close the case.

SO ORDERED. This 14 day of December 2017.


JAMES C. DEVER III
Chief United States District Judge